



Who Has My Evidence?



DRUG RECOGNITION EVALUATION

Scenario

- DRE requested to respond to the County Hospital to conduct a DRE on a second driver involved in the collision.



DRUG RECOGNITION EVALUATION

Scenario

- Upon your arrival subject is in intensive care and unavailable for observation.



DRUG RECOGNITION EVALUATION

Where do you go from here?
Where is your evidence?
What is your evidence?
How do you get it?



DRUG RECOGNITION EVALUATION

What Can We Do?

WRITE A SEARCH WARRANT

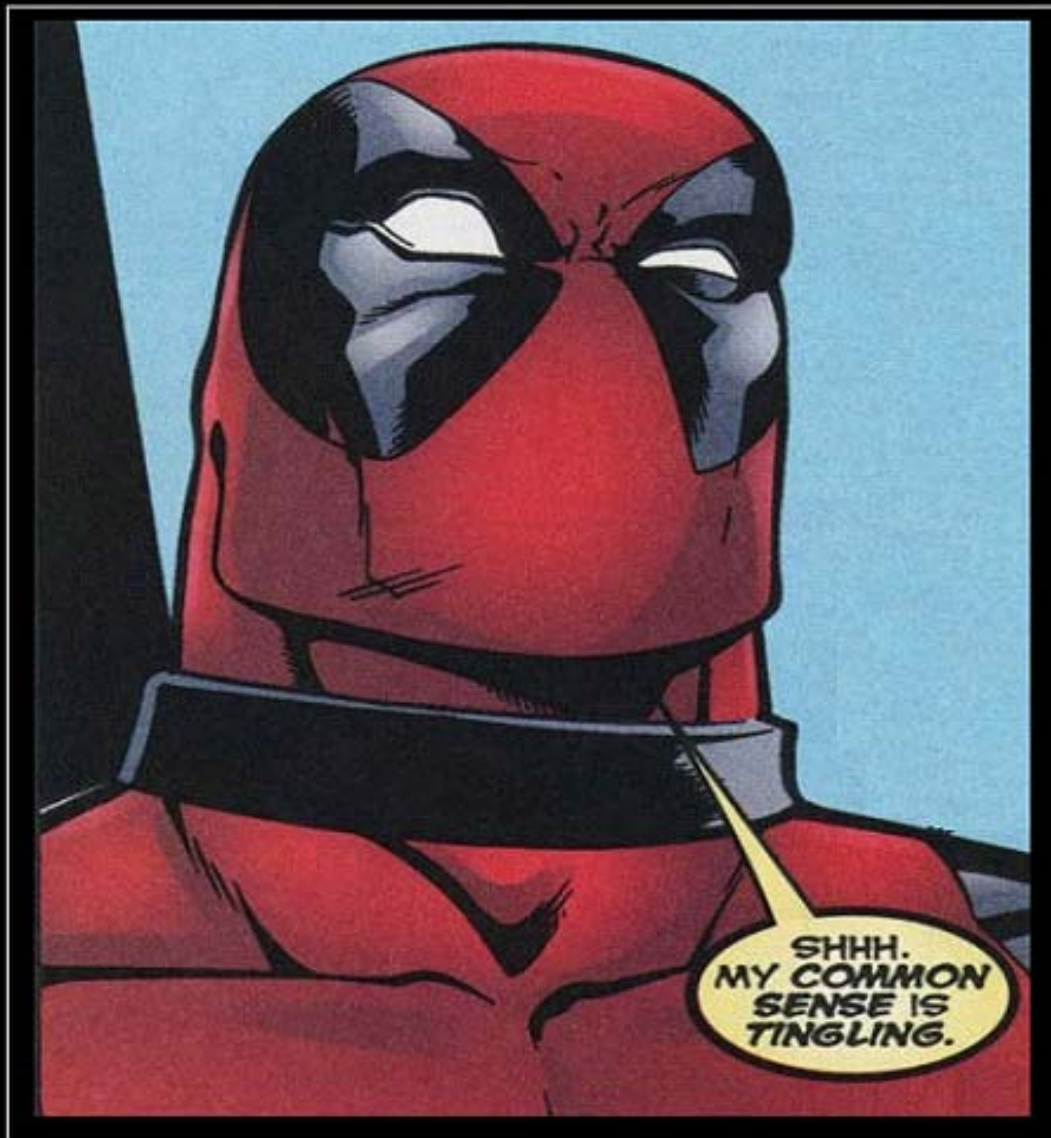


DRUG RECOGNITION EVALUATION

THE WARRANT CONCEPT...
IS SIMPLE.



DRUG RECOGNITION EVALUATION



Common Sense

So rare that it's a super power.

What are the benefits of obtaining a search warrant?

Searches pursuant to a search warrant are presumed lawful

- Burden is on the defendant to prove illegality.
- If other grounds for searching are rejected, the warrant will validate the search.



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So, what exactly is a search warrant?



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- Search Warrant

is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate

- (Pen. Code, § 1523.)



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This is a Search Warrant...



DRUG RECOGNITION EVALUATION

SW No. _____

STATE OF CALIFORNIA - COUNTY OF SACRAMENTO
SEARCH WARRANT AND AFFIDAVIT

(AFFIDAVIT)

YOUR NAME HERE, declares under penalty of perjury that the facts expressed by him in the attached and incorporated **Statement of Probable Cause**, are true and that based thereon he has probable cause to believe and does believe that the articles, property and persons described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and are now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

_____, NIGHT SEARCH REQUESTED: YES [] NO []

(Signature of Affiant)

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, MARSHAL OR POLICE OFFICER IN THE COUNTY OF SACRAMENTO: proof by affidavit, under penalty of perjury, having been made before me by *YOUR NAME HERE* that there is probable cause to believe that the property or person described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X"(s) in that it:

<input type="checkbox"/>	was stolen or embezzled.
<input type="checkbox"/>	was used as the means of committing a felony.
<input type="checkbox"/>	is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
<input type="checkbox"/>	tends to show that a felony has been committed or that a particular person has committed a felony.
<input type="checkbox"/>	tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.
<input type="checkbox"/>	there is a warrant to arrest the person.

YOU ARE THEREFORE COMMANDED TO SEARCH: (premises, vehicles, persons)

DETAILED DESCRIPTION OF THE PLACE TO BE SEARCHED.

FOR THE FOLLOWING PROPERTY OR PERSONS:

DETAILED DESCRIPTION OF THE THINGS TO BE SEARCHED FOR.

AND TO SEIZE IT/THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Affidavit and attached and incorporated **Statement of Probable Cause** were sworn to as true under penalty of perjury and subscribed before me on (date) _____ at _____ *a.m./p.m.* Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

_____, NIGHT SEARCH APPROVED: YES [] NO []

Signature of Magistrate

Judge of the Superior Court, _____

Judicial District, Dept./Div. _____

What has to be on a search warrant?

- Names of all affiants
- Statutory grounds for issuance
 - (Pen. Code, § 1524)
- Description of the places and/or persons to be searched
- Description of the things or property to be seized
- Indication by the magistrate if nighttime search is authorized
- Magistrate's signature
- Date issued.



DRUG RECOGNITION EVALUATION

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STATE OF CALIFORNIA - COUNTY OF SACRAMENTO
SEARCH WARRANT AND AFFIDAVIT

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(Signature of Affiant) NIGHT SEARCH REQUESTED: YES [] NO []



DRUG RECOGNITION EVALUATION



(SEARCH WARRANT)

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	was used as the means of committing a felony.
	is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
	tends to show that a felony has been committed or that a particular person has committed a felony.
	tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.
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DRUG RECOGNITION EVALUATION



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_____, NIGHT SEARCH APPROVED: YES [☐] NO [☐]

Signature of Magistrate

Judge of the Superior Court, _____

Judicial District, Dept./Div. _____



DRUG RECOGNITION EVALUATION



Affiant

The person who swears under oath that the information contained in the affidavit is true. Usually it is a police officer.



DRUG RECOGNITION EVALUATION

Affidavit

Statement of "probable cause", made under oath, for the search and the statutory grounds for issuance, describing the place or person to be searched or searched for, and the property or things to be seized.



DRUG RECOGNITION EVALUATION

Magistrates

Magistrates are judges of the superior courts, courts of appeal, and the state supreme court. Only magistrates may authorize a search warrant.



DRUG RECOGNITION EVALUATION

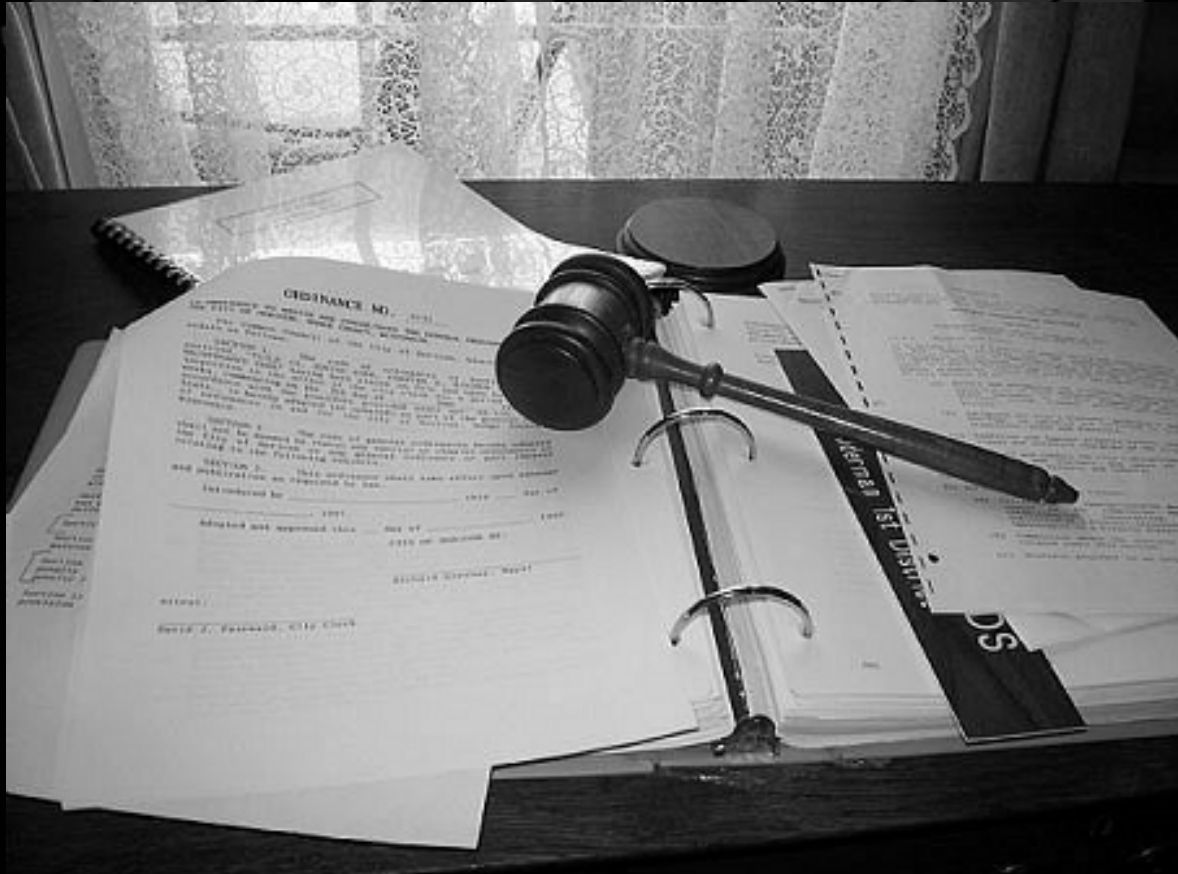
A magistrate cannot issue a search warrant unless the affidavit contains "probable cause"

(Pen. Code, § 1524.)



DRUG RECOGNITION EVALUATION

So what exactly is Probable Cause?



DRUG RECOGNITION EVALUATION

Arrest:

... strong belief that a crime has been committed.

Search:

... fair probability the object will be found at the place searched.



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Probable Cause

Does an officer possess enough factual knowledge or other reliable information so that it is reasonable, in light of the officer's training and experience, to believe "X".



DRUG RECOGNITION EVALUATION

Probable Cause

As an example, for an arrest, it means enough credible information for you to strongly believe that the person has committed a crime.



DRUG RECOGNITION EVALUATION

Probable Cause

For search warrants, it means essentially the same thing: a “fair probability” that the object you seek will be found at the place searched.



DRUG RECOGNITION EVALUATION

The task of the issuing magistrate is to make a common-sense decision whether there is a fair probability that contraband or evidence of a crime will be found in a particular place.



DRUG RECOGNITION EVALUATION

What about getting information from other people?

Frequently, the affidavit contains information the affiant obtained from another person.

A provider of information is an "informant"- whether he is a victim, a suspect, a fellow officer, or a police dispatcher.



DRUG RECOGNITION EVALUATION

"Citizen" Informants

A "citizen" informant is generally a victim or an eyewitness to a crime

Someone who gives information to the police out of motives of good citizenship or under other circumstances that do not cast doubt upon its truthfulness.



DRUG RECOGNITION EVALUATION

Witness statements

If you are relating information from this type of informant, do not just call him or her a "citizen informant" without setting forth the facts from which the magistrate can conclude that person falls in this category.



DRUG RECOGNITION EVALUATION

For example, state that the individual gave his or her name and address (these do not have to be revealed,

How you (the affiant) came into contact with the individual,

What the individual's reason is for giving information to the police, etc.



DRUG RECOGNITION EVALUATION

You must state facts, not conclusions, which show the basis for the informant's information:

- how he knows what he told you.
- normally met by personal knowledge, by stating the informant personally experienced the information that he relates.



DRUG RECOGNITION EVALUATION

Example: "Informant X has told your affiant that the subject was intoxicated. . ." would be insufficient.

The correct way would be,

"Informant X has told your affiant that he personally observed the following specific signs of impairment"



DRUG RECOGNITION EVALUATION

You must supply the magistrate with enough underlying factual information to demonstrate that the informant is credible

i.e., that it is reasonable to believe him because he is telling the truth.



DRUG RECOGNITION EVALUATION

Police Officers/"Official Channels"

Police officers and other law enforcement personnel are considered reliable because of their occupation

Information which the affiant has obtained from a fellow officer will automatically be considered reliable



DRUG RECOGNITION EVALUATION

STALENESS

Time is crucial to probable cause.

The affidavit must provide information making it reasonable to believe the material sought is still on the premises.



DRUG RECOGNITION EVALUATION

EXPERTISE, TRAINING AND EXPERIENCE

When preparing an affidavit, be sure to set forth your training and experience to show the basis of your opinions.



DRUG RECOGNITION EVALUATION

For an informant, the same thing holds true. It is not enough to simply state that the informant saw that a person was “drunk” without adding how he recognized it

What background, training, experience, or other knowledge enabled him to say that the subject was intoxicated.



DRUG RECOGNITION EVALUATION

DESCRIBING THE PLACE TO BE SEARCHED

...described with "reasonable particularity" in both the warrant and the affidavit.



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A Rule of Thumb...

A person with no knowledge of the case should be able to find the location to be searched based on the description.



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Particularly describe this
house....



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DRUG RECOGNITION EVALUATION

Example: "... 341 Emily Ln, Lincoln, CA, a single-story dwelling house with white stucco exterior, tan wooden trim and a red tile roof, three car garage, number "341" affixed to south pillar of garage...

And all rooms, attic, basement and other parts therein; and the surrounding grounds, garage, storage rooms and out-buildings of any kind located on the premises."



DRUG RECOGNITION EVALUATION

If you realize that the description is incorrect, do not serve the warrant.

Instead, correct the description and return the documents to the magistrate for another signature.



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Use of Photographs and Diagrams

If an adequate description would be difficult to formulate, use of photographs and diagrams to supplement a description.



DRUG RECOGNITION EVALUATION



DRUG RECOGNITION EVALUATION

DESCRIBING THE PROPERTY TO BE SEIZED

The property to be seized must be also described with "reasonable particularity."



DRUG RECOGNITION EVALUATION

PRESENTING THE WARRANT AND AFFIDAVIT TO THE MAGISTRATE

You are responsible for presenting
accurate documents to be signed.



DRUG RECOGNITION EVALUATION

Technical Requirements

If satisfied with your affidavit, you will be sworn under oath.



DRUG RECOGNITION EVALUATION

Questioning by the Magistrate

The magistrate may question the affiant or informant under oath.



DRUG RECOGNITION EVALUATION

Information Not Contained in the Affidavit

The magistrate and the reviewing courts are confined to the "four corners" of the documents presented.

If probable cause exists but is not reflected in the documents, supplying it at some later point is useless.



DRUG RECOGNITION EVALUATION

SERVICE OR EXECUTION OF THE WARRANT AND ITS RETURN

Time Limits for Service and Return

Penal Code section 1534 states that the search warrant shall be executed and returned within 10 (calendar) days from issuance.



DRUG RECOGNITION EVALUATION

So, what does a
DRE “blood warrant” look like?



DRUG RECOGNITION EVALUATION

As stated in Penal Code sections 1529 and 1533,
the following must appear in the warrant:

- Names of all affiants

(AFFIDAVIT)

Sergeant Daniel Lamm, declares under penalty of perjury that the facts expressed by him in the attached and incorporated **Statement of Probable Cause**, are true and that based thereon he has probable cause to believe and does believe that the articles, property and persons described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and are now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

(Signature of Affiant)

NIGHT SEARCH REQUESTED: YES [] NO [x]



DRUG RECOGNITION EVALUATION

As stated in Penal Code sections 1529 and 1533,
the following must appear in the warrant:

- Statutory grounds for issuance (Pen. Code, § 1524)

	was stolen or embezzled.
	was used as the means of committing a felony.
	is possessed by a person with the intent to use it as means of committing a public offense or is possessed by
	another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
X	tends to show that a felony has been committed or that a particular person has committed a felony.
	tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, or possession of matter
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	there is a warrant to arrest the person.



DRUG RECOGNITION EVALUATION

As stated in Penal Code sections 1529 and 1533,
the following must appear in the warrant:

- Description of the places and/or persons to be searched

YOU ARE THEREFORE COMMANDED TO SEARCH: (premises, vehicles, persons)

South Sacramento Kaiser Permanente Medical Center

Contact: Mary Stevens
6600 Bruceville Road
Trauma Program Manager
Sacramento, CA 95823
916-687-2796



DRUG RECOGNITION EVALUATION

As stated in Penal Code sections 1529 and 1533,
the following must appear in the warrant:

- Description of the things or property to be seized

FOR THE FOLLOWING PROPERTY OR PERSONS:

1. Medical Records

Copies of the medical records of _____ which relate to any
examination and/or treatment of _____ for injuries
and medical condition related to his involvement in the traffic collision on _____.

2. Blood and Urine Samples

All physical samples of blood and urine collected from _____ which relate to
any examination or analysis of the patient for injuries and medical conditions related to his
involvement in the traffic collision on _____.



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Signature of Magistrate

Judge of the Superior Court, _____

Judicial District, Dept./Div. _____



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